Bail Slip

That the Appellant/Accused namely A. Sukumar S/o. P.Arumugam was released on bail as per order of this Court dated 11.01.2013 made in Crl.M.P.No.1/2013 in Crl.A. No. 39/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 22.02.2022	Date of Pronouncing Order 19.04.2022

CORAM
THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.A.No.39 of 2013

A. Sukumar ...Appellant/Accused

Vs.

The Inspector of Police,
SPE/CBI/ACB, Chennai.
(R.C.No.64/A/2008) ...Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment, conviction and sentence imposed upon the appellant herein by the learned IInd Additional District Judge, CBI Cases, Coimbatore, in C.C.No.4 of 2009 dated 28.12.2012 and acquit the appellant herein.

For Appellant : Mr. R. Karthikeyan
For Respondent : Mr. K. Srinivasan,
Special Public Prosecutor
for CBI Cases

J U D G M E N T

This appeal is filed challenging the judgment of the learned II Additional District Judge (CBI Cases), Coimbatore in C.C.No.4/2009.

2. Respondent filed a final report against the appellant alleging that he was working as a Superintendent of Central Exercise and Service Tax at the office of Deputy Commissioner of Central Exercise, Coimbatore-I Division, Coimbatore. During the second week of December 2008, the

defacto complainant-Senthilkumar enquired him about his application dated 13.07.2007 for obtaining Service Tax Registration Certificate. Appellant directed him to file a fresh application and Senthilkumar had filed an application dated 18.12.2008. Appellant obtained another application dated 26.12.2008 from Senthilkumar and asked him to meet him on 30.12.2008 for getting the Registration Certificate with a bribe amount of Rs.2,500/- and later reduced to Rs.1,000/-. Senthilkumar did not want to give bribe and therefore, gave a complaint. During the course of same transaction, on 30.12.2008, appellant was caught red-handed while demanding and accepting the bribe amount of Rs.1,000/- from Senthilkumar. The appellant, by demanding and accepting illegal gratification other than legal remuneration to perform his duty as public servant, abused his official position and thus, committed the offences punishable under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act. On the basis of this final report, two charges, under Section 7 and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, were framed against the appellant.

3. The prosecution examined P.W.1 to P.W.12, produced Exs.P1 to P26 and MO.1 to MO.5, in support of the case. Appellant examined D.W.1 to D.W.6 and produced Exs.D1 to D8, in support of his case.

4. The case of the prosecution, as discerned from the evidence of prosecution witnesses, in brief, is, as follows:-

4(i). P.W.3 is the defacto complainant in this case. P.W.4 is a trap witness. P.W.7 is the trap laying officer. P.W.3 started a man power recruitment agency called M/s.Vikekananda Job solution in July 2007. He wanted to start a current account and approached the Branch Manager of Indian Overseas Bank, Mettupalayam Road Branch, Coimbatore. He was instructed to get Service Tax Registration Certificate for starting a bank account. Therefore, he approached the Central Exercise Office at Coimbatore. On 13.07.2007, he submitted an application for Service Tax Registration Certificate. Due to his preoccupation, he could not follow his application. The application dated 13.07.2007 is Ex.P4. Then, in December second week, when he approached the appellant for Service Tax Registration Certificate, he asked him to come after a week.

4(ii). Then, on 18.12.2008, he met the appellant. Appellant advised him to submit a fresh application and accordingly, he did. Ex.P6 is his fresh application. Appellant informed him on 26.12.2008 over phone that the address given in the application and Ex.P7 Electricity card does not tally and directed him to give a fresh application. On 26.12.2008, P.W.3 submitted a fresh application along with annexure. That is Ex.P8. Appellant told him that he used to get Rs.2500/- for issuing Service Tax Registration Certificate and asked him to give bribe amount of his choice. P.W.3 told him that it was not possible for him to give Rs.2,500/- and offered to give him Rs.1,000/-, but he did not want to give bribe and therefore, informed SP, CBI. SP, CBI advised him to meet CBI Officer staying at Cheran Palace Lodge on 30.12.2008.

4(iii). On 30.12.2008, he met Inspector Prabakaran and gave a complaint. He was asked to come again at 1.00 pm. He was introduced to witnesses Jayaraman and Mallaiah. Sequence of sodium carbonate phenolphthalein test was demonstrated to him and the witnesses. The bribe money was received from him and recorded in the Entrustment Mahazar. Entrustment Mahazar is Ex.P9. At about 2.30 pm, they started to appellant's office. P.W.3 and witness Mallaiah entered the office and found one Sepoy was enquiring the persons visiting the office as to the purpose of their visit. Thinking that if Mallaiah accompanies him, it would arise suspicion, P.W.3 asked him to wait in a sofa outside the appellant's cabin and went inside. Appellant informed him that the Service Tax Registration Certificate is ready and handed him over the certificate dated 26.12.2008. Then, he asked him about the bribe money of Rs.1,000/-. P.W.3 handed over the bribe amount to him. That was received by the appellant with his right hand and he kept it in his left shirt pocket. P.W.3 came out and informed the witness Mallaiah and then he signaled to the Inspector. Then, P.W.7-Inspector asked him to identify appellant and so he did. P.W.7 introduced himself and his team to the appellant and asked him to disclose his name and designation. He requested Deputy commissioner Sri.H.Gnanaraj to assist him in trap proceedings. Prepared sodium carbonate phenolphthalein solution. The appellant was directed to dip his right hand fingers and left hand fingers in the solution. Appellant was asked to produce the bribe amount, which he produced from his left side shirt pocket. His shirt pocket was also subjected to sodium carbonate/phenolphthalein test. They could see the solution changed into pale pink colour when the appellant's right hand fingers and shirt were subjected to sodium carbonate/phenolphthalein test. The amount recovered from the appellant tallied with the numbers found in the Entrustment Mahazar. P.W.7 prepared Ex.P11-Recovery Mahazar. P.W.4 supported the evidence of P.W.7 with regard to the trap proceedings. P.W.12 continued further investigation in this case, obtained sanction for prosecution and filed a final report against the appellant.

5. On the basis of the oral and documentary evidence produced in this case, the learned trial Judge found the appellant guilty under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, convicted and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/-, in default to pay the fine, to undergo rigorous imprisonment for six months for the offence under Section 7 of Prevention of Corruption Act and sentenced him to undergo rigorous imprisonment for two years, to pay fine of Rs.5,000/- in default to pay the fine, to undergo rigorous imprisonment for six months under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. Opposing and challenging the said judgment, this appeal is filed by the appellant.

6. Learned counsel for the appellant submitted that there is no proof for the alleged demand of bribe by the appellant. It is seen from the records produced that P.W.3 gave false address when applying for Service Tax Registration Certificate. The original Registration Certificate dated 26.12.2008 and was received by P.W.3 on the same date. Thus, there is no possibility of demanding the bribe on 30.12.2008. Original Service Tax Registration Certificate is not recovered and produced before the Court. The witnesses examined on the side of the appellant proved that the address given by P.W.3 is not true. There is no corroboration for the alleged demand made on 30.12.2008 because P.W.4, the trap witness has not gone inside the room of the appellant. P.W.3 had given false address for obtaining Registration Certificate and when the appellant warned him about the consequences, he gave this false complaint. He started the man power agency with fictitious address to cheat the general public. Sample bottle was not properly sealed and sent for analysis. It creates suspicion regarding sampling procedure and scientific analysis. Inspite of all these pit-falls have been brought to the notice of the learned trial Judge, the learned trial Judge has not considered the material flaws in the case of the prosecution and wrongly convicted the appellant. Therefore, the learned counsel for the appellant prayed for setting aside the judgment of the trial Court and for acquitting the appellant.

7. Per contra, learned Special Public Prosecutor for CBI Cases submitted that P.W.3 has given clear evidence with regard to demand of bribe by the appellant prior to trap proceedings and on the date of trap. Though, the trap witness has not gone inside the cabin of the appellant, P.W.3 had given consistent evidence with regard to the demand of bribe by the

appellant prior to the trap and on the date of trap. The bribe amount was recovered from the appellant. His right hand fingers and shirt were tested positive for the presence of phenolphthalein, thereby, proving that the appellant received the bribe amount from P.W.3 and kept in his shirt pocket. Thus, chain of circumstances starting from the demand of bribe, his acceptance and recovery of bribe had been proved beyond any reasonable doubt. P.W.3 had changed the address and therefore, different addresses are given by him. The address given in the GST application form and the family card tallies and therefore, the change of addresses cannot be the reason for doubting the prosecution case. The trial Court rightly found the appellant guilty and sentenced him under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act. Thus, he prayed for confirming the judgment of the trial Court and dismissal of this appeal.

8.Considered rival submissions and perused the records.

9.i)Whether the prosecution has not proved the demand of illegal gratification by the appellant?

ii)Whether conviction of the appellant and sentence imposed on him by the trial Court can be sustained, in the light of the aforesaid grounds raised by the learned counsel for the appellant?

iii)Whether this appeal can be allowed?

10.The charge against the appellant is that, he demanded bribe of Rs.2,500/- from appellant for issuing service tax registration certificate and then reduced to Rs.1000/- and accepted it. The oral and documentary evidence produced by the respondent shows that PW3 had earlier applied for registration certificate under Section 69 of the Finance Act, on 13.07.2007. The copy of the application is produced as Ex.P5. In fact, this application was processed. Certificate of registration was made ready in Service Tax Code (Registration No.AHMPD9433BST001) as evidence from Ex.P23. It is evidence of P.W.3 that after submitting the application on 13.07.2007, he had not followed the application submitted by him and then he gave another application on 18.12.2008 and that is produced as Ex.P6. It is alleged in Ex.P10 complaint that appellant informed him that the application dated 18.12.2008 was rejected by the appellant stating that proper documents were not annexed for supporting the address given in the application. It was also alleged that appellant wanted him to give another application and P.W.3 gave an application dated 26.12.2008. After receiving the application, appellant informed that he would give registration certificate on 30.12.2008 and demanded a bribe of Rs.2,500/-, which is the usual amount paid by others. He also gave a concession to P.W.3 that he may pay whatever possible for him to pay. Left with no option P.W.3 agreed to pay Rs.1000/- as bribe. Then, not willing to pay bribe he gave Ex.P10 complaint.

11.P.W.6 was Joint Commissioner of Central Excise, CBE-I Division at the relevant point of time. Ex.P2 and Ex.P3 are the work allotment order. As per Ex.P13, appellant was assigned the work of giving service tax registration certificate. It is seen from the evidence of P.W.6 that the certificates will be prepared on the basis of the applications and submitted to the Superintendent. Then the Superintendent, after verifying the certificate, should deliver it to the applicants. Copy of the registration certificate should be sent to pay and accounts office and range office. The registration certificate should be given within seven days from the date of application. P.W.8 was working as Inspector Central Excise, Coimbatore. He processed the service tax registration applications. Ex.P4 application was processed by him and then sent to the signature of Assistant Commissioner. P.W.10, the Superintendent of Central Excise had spoken about receiving Ex.P4 application and asking PW8 to process the application. From the evidence of P.W.3, P.W.6, P.W.8 and P.W.10, it is established that P.W3 had given three applications for service tax registration certificate. The first application was given on 13.07.2007 and that after submitting the application, he did not follow it. Then, he submitted another application on 18.12.2008, and that was rejected by the appellant stating that the address given in the document annexed for proof of address did not tally with the address given in the application. As per the instruction of the appellant, he gave another application on 26.12.2008.

12.A strenuous argument was advanced by the learned counsel for the appellant stating that, as per Ex.P8 and Ex.P14 that on the basis of the application of P.W.3 dated 26.12.2008, service tax registration certificate was made ready on the same date, that is on 26.12.2008 itself and was delivered to P.W.3. In acknowledgment of the receipt of the registration certificate, P.W.3 had signed in the office copy of the registration certificate. Neither the office copy of the registration certificate containing the acknowledgment of P.W.3 nor the original registration certificate given to P.W.3 was seized by the investigating officer. When P.W.3 had received the original registration certificate on 26.12.2008 itself, what is the necessity for him to meet the appellant on 30.12.2008. Therefore, it is apparent that the charge made against the appellant that he demanded bribe on 26.12.2008 and then on

30.12.2008 is absolutely not true. For the alleged demand of bribe on 26.12.2008 and 30.12.2008, there is no corroborative evidence in support of the evidence of interested testimony of P.W.3. By suppressing the original registration certificate given to P.W.3 and office copy of the registration certificate containing the acknowledgment of P.W3, for the receipt of registration certificate, the prosecution has failed to establish the charge that appellant made a demand for bribe on 26.12.2008 and then on 30.12.2008.

13.It is true that the prosecution has failed to produce original registration certificate given to P.W.3 and the office copy allegedly containing the acknowledgment of P.W.3 for the receipt of original registration certificate. Of course, there is no other material produced to show that P.W.3 received original registration certificate on 30.12.2008, except the evidence of P.W.3. But, one thing is clear that if the registration certificate was handed over to P.W.3 on 26.12.2008 itself, there was no need for giving any complaint by P.W.3 against the appellant at all. Appellant had not established previous motive for P.W.3 to give a false complaint against him and P.W.7 to initiate trap proceedings. May be it is a lapse on the part of the prosecution in omitting to produce the original registration certificate given to P.W.3 and acknowledgment given by him for the receipt of original registration certificate in the office copy or any other record. For this omission alone, the case of the prosecution cannot be set aside, case has to be decided on the basis of the entire evidence available in this case. It has to be borne in mind that the case of the prosecution is that the service tax registration certificate was handed over to P.W.3 on 30.12.2008, just prior to trap proceedings. Possibility of not obtaining the acknowledgment for the receipt of service tax registration certificate on 30.12.2008 cannot be ruled out.

14.P.W.3 had very clearly stated in his complaint and then during the course of his evidence about the demand of Rs.2,500/- by the appellant on 26.12.2008 for giving registration certificate and option given by him to P.W.3 that he may pay whatever the amount he can part with. P.W.3 agreed to pay Rs.1000/-. Of course, at the time of this demand of bribe, there was no eye witness present. The only evidence with regard to the first demand of bribe is the evidence of P.W.3. Then, on 30.12.2008, P.W.3 went to the office of appellant along with P.W.4. Fearing that, if P.W.4 accompanies with him to the cabin of appellant, he would entertain suspicion, P.W.3 asked P.W.4 to sit in a sofa outside the cabin and P.W.3 went inside the cabin of appellant to enquire about the registration certificate. Appellant informed him about the procedure for filing service tax retails and then gave him the service tax registration certificate dated 26.12.2008. Then, he asked about the bribe amount of Rs.1000/-. P.W.3 handed over him phenolphthalein powder smeared currency notes to appellant. Appellant received the amount and then kept it in his left side shirt pocket. Then P.W.3 came out the appellant's cabin. He was joined by P.W.4. Both of them got out of office and signaled to P.W.7 Inspector with the prearranged signal. P.W.3 informed P.W.7 about what had happened inside the cabin of the appellant and all of them went inside the cabin of the appellant.

15.The specific task assigned to P.W.4 was to accompany P.W.3, when P.W.3 meet the appellant and observe the transaction that takes place between the appellant and P.W.3. However, it is seen from the evidence of P.W.3 and P.W.4, at the last moment, as per the instruction of P.W.3, P.W.4 did not go inside the cabin of appellant and he stayed outside. Therefore, he is not aware of the alleged second demand and acceptance of the bribe amount by the appellant. Thus, we are left with only the evidence of P.W.3 for proving the demand made on 26.12.2008 and 30.12.2008.

16.As already stated there is no motive for P.W.3 to give a false complaint against the appellant. It is suggested on behalf of the appellant that since, P.W.3 gave address not supported by valid document at the time of applying for service tax registration and the application dated 18.12.2008, was rejected by appellant and when appellant told P.W.3 about the consequences of giving false address, P.W.3 got annoyed and gave false complaint against the appellant to wreck vengeance on him. In support of this submission, learned counsel for the appellant drew the attention of this Court, the evidence of D.W.1 to D.W.6 and Ex.D1 to D8 to show that P.W.3 had given different addresses while submitting applications on 13.07.2007, 18.12.2008 and 26.12.2008. He had also given a different address in Ex.P10 complaint. It is also submitted that after obtaining service tax registration certificate, P.W.3 had not submitted any returns with regard to payment of service tax. These facts show that P.W.3 is not a genuine person and his plan was to start a man power recruitment agency by giving false address and with an intention to cheat the general public. Therefore, on the basis of the complaint given by mysterious and mischievous person prosecuting the case against the appellant is not correct.

17.True, it is that the perusal of Ex.P5 to Ex.P.10 documents shows that P.W.3 had given different addresses while submitting application for service tax registration certificate and while giving Ex.P10 complaint and in Ex.P9 entrustment mahazar. It is claimed by the prosecution that P.W.3 had changed addresses, frequently and that was the reason for this change in addresses. The evidence of D.W.1 shows that there is no address as Door No.57/14, Meenakshi Nagar, Koundampalayam, Coimbatore. It is seen from the evidence of D.W.2 that M/s.Vivekananda Job Solution has not filed ST-3 return for half yearly ending 30.09.2009. The evidence of D.W.6 shows that that P.W.3 had given address as Door No.57/14, Meenakshi Nagar, Koundampalayam, Coimbatore, at the time of registration of two wheeler TN 36 AX 6136. Ex.D3 shows that there are three blocks in Cheran Nagar and No.7 is not available in all the three blocks. Door No.18 is not available at Vatta Kinaru Thottam. No.18 Vivek Nagar, G.N. Mills PO, Thudiyalur, Coimbatore comes under the delivery jurisdiction of G.N.Mills Sub Post Office. No.57/26, Meenkshi Nagar, Koundampalayam, Coimbatore comes under the delivery jurisdiction K.P. Colony Sub Post Office. The combined reading of evidence of D.W.1 to D.W.6 and Ex.D1 to Ex.D8 shows that there is discrepancy in the address given in the application submitted for service tax registration. However, we are not concerned in this case with regard to the correctness or falsity of the addresses given by P.W3 at the time of applying for service tax registration. If the address given by P.W.3 in the application is not correct and not supported by authentic document, it is for the authorities concerned to reject the application.

18.It is clearly stated by P.W.3 that when he submitted his application on 18.12.2008 that application was rejected by the appellant stating that the address given in the document filed in support of the address did not tally with the address given in the application. Then, he claimed that only at the instance of appellant he gave another application dated 26.12.2008. The application dated 26.12.2008 bears the address No.57/14 Meenkshi Nagar, Koundampalayam, Coimbatore. This address is supported by the ration card produced by P.W.3. Only when P.W.3 submitted the application dated 26.12.2008, the appellant said to have demanded bribe. Therefore, the address right or wrong given in the earlier applications dated 13.07.2007 and 18.12.2008, in the considered view of the Court, out of purview of the consideration for the purpose of deciding this case. It is also claimed by the learned Additional Public Prosecutor that P.W.3 had changed addresses during the relevant period and therefore, there are multiple addresses given. Thus, this Court is of the considered view that the multiple addresses given by P.W.3 would no way dent the case of the prosecution.

19.As said above there is no corroborative evidence except the evidence of P.W.3 with regard to the alleged demand of bribe by the appellant on 26.12.2008 and then 30.12.2008. In a case like this, merely because there is no corroborative evidence, we cannot straight away discard the evidence of the defacto complainant, P.W.3 in this case. If the evidence of P.W.3 inspires the confidence of this Court, there is no reason why his evidence should not be believed with regard to the demand of bribe and its acceptance by the appellant. As already stated and at the risk of repetition, the appellant has not established any motive except the suggestion that because of the rejection of application dated 18.12.2008, warning given for giving false address, P.W.3 got annoyed and gave a false complaint, no other believable motive was established for P.W.3 to give false complaint. P.W.3 had given cogent evidence with regard to the demand of bribe made on 26.12.2008 and then on 30.12.2008. This demand is supported by acceptance of the bribe amount by appellant on 30.12.2008 and its recovery by P.W.7 during the trap proceedings.

20.After giving the bribe amount, P.W.3 came out of cabin of the appellant and informed P.W.7 about the transaction that had happened inside the appellant's cabin. Then, P.W.7 along with P.W.3 and P.W.2 and other police officials went inside the cabin of the appellant. P.W.7 introduced himself and his team to the appellant, then conducted Sodium Carbonate Phenolphthalein test in the presence of witnesses especially P.W.6, the Joint Commissioner and Superior of the appellant. The evidence of P.W.3, P.W.4, P.W.6 and P.W.7 shows that when appellant's right hand and left hand fingers and his left shirt pocket were subjected for Sodium Carbonate phenolphthalein test, the Sodium Carbonate solution for right hand fingers and shirt changed to pink colour. There was no obvious change of colour in the solution used for dipping left hand fingers. The evidence of P.W.2, the Scientific Officer, Grade-II, Forensic Department and Ex.P3 report submitted by her show that three sealed glass bottles with a label i)Right hand wash ii)left hand wash iii)shirt packet wash with pale pink turbid liquid were received. When analyzed, the presence of phenolphthalein and Sodium Carbonate were detected in all the three solutions in the bottles. It is also seen from the evidence of P.W.2 that if the presence of phenolphthalein powder is less, there would be change in the colour of solution. Though P.W.3, P.W.4, P.W.6 and

P.W.7 had not noticed the change of colour in the Sodium Carbonate solution used for dipping appellant's left hand finger, the scientific analysis shows that there was presence of phenolphthalein in this solution also. Meaning thereby, appellant had also touched the phenolphthalein smeared currency notes with his left hand fingers also. P.W.4 and P.W.6 had no reason to give false evidence against the appellant. Both are Government officials and in fact P.W.6 is the superior of the appellant. Their evidence combined with the evidence of P.W.3 and P.W.7 clearly establishes the fact that the appellant received, rather accepted the bribe money given by P.W.2 and then, it was recovered from the appellant's shirt pocket. Thus, this Court is of the considered view that the prosecution clearly proved the demand of bribe by the appellant, its acceptance and recovery from the appellant by P.W.7.

21.For the reasons aforesaid, this Court finds that prosecution has clearly proved the demand of illegal gratification and its acceptance by the appellant, beyond any pale of doubt and therefore, the trial Court had rightly convicted and sentenced the appellant for the offences under Section 7 and 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988. Resultantly, this Criminal Appeal in Crl.A.No.39 of 2013 is liable to be dismissed. Thus, the points 1, 2 and 3 are answered.

22.In the result, this Court confirms the judgment in C.C.No.4 of 2009 dated 28.12.2012 passed by the learned II Additional District Judge, CBI cases, Coimbatore, in convicting and sentencing the appellant for the offences under Section 7 and 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act, 1988 and dismisses this Criminal Appeal in Crl.A.No.39 of 2013. The learned II Additional District Judge, CBI cases, Coimbatore is directed to take steps to secure the appellant to undergo the remaining part of the sentence.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AT/ep

To

1.The IInd Additional District Judge, CBI Cases, Coimbatore.

2.The Inspector of Police,
SPE/CBI/ACB, Chennai.

3.The Public Prosecutor,
High Court of Madras.

+1 CC to Mr. R. Karthikeyan, Advocate sr 26668

Crl.A.No.39 of 2013

MG(CO)
SP(04/05/2022)